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CRIMES AND OFFENSES Offenses Against Public Order and Safety: Provide a Short Title; Amend Part 1 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, Relating to Dangerous Instrumentalities and Practices, so as to Provide for a Felony for Soliciting, Persuading, Encouraging, or Enticing any Dealer to Transfer or Otherwise Convey a Firearm to Anyone Other than the Actual Buyer; Amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, Relating to the Carrying and Possession of Firearms, so as to Change Certain Provisions Relating to Carrying Deadly Weapons

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Georgia State University Law Review, *CRIMES AND OFFENSES Offenses Against Public Order and Safety: Provide a Short Title; Amend Part 1 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, Relating to Dangerous Instrumentalities and Practices, so as to Provide for a Felony for Soliciting, Persuading, Encouraging, or Enticing any Dealer to Transfer or Otherwise Convey a Firearm to Anyone Other than the Actual Buyer; Amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, Relating to the Carrying and Possession of Firearms, so as to Change Certain Provisions Relating to Carrying Deadly Weapons to or at Public Gatherings; Provide for Constables to Carry Pistols in Publicly Owned or Operated Buildings; Exempt Constables from the Prohibition of Carrying Weapons Within School Safety Zones, at School Functions, or on School Property; Change Certain Provisions Regarding the Transportation and Carrying of Certain Firearms; Prohibit the Carrying of Firearms and Other Weapons into Certain Buildings; Provide a Definition; Authorize the Carrying of Firearms in Certain Locations; Require the Timely Issuance of Firearm Licenses; Prohibit Certain Employers from Searching the Private Vehicles of Employees; Prohibit Employers from Conditioning Employment Based upon Certain Regulations Regarding the Possession of a Firearm; Provide Exceptions; Provide Certain Immunity for Employers; Provide for Civil Remedies; Provide for the Timely Issuance of Firearms Permits and Licenses; Provide for Remedies for Failure to Receive Firearms Permits or Licenses Under Certain Circumstances; Prohibit the Consumption of Alcoholic Beverages while Carrying a Firearm Under Certain*

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Torts, so as to Provide Certain Immunity from Liability for Certain Persons and Entities that Voluntarily and Without Compensation Assist State Agencies During Times of Declared Emergencies; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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## CRIMES AND OFFENSES

***Offenses Against Public Order and Safety: Provide a Short Title; Amend Part 1 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, Relating to Dangerous Instrumentalities and Practices, so as to Provide for a Felony for Soliciting, Persuading, Encouraging, or Enticing any Dealer to Transfer or Otherwise Convey a Firearm to Anyone Other than the Actual Buyer; Amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, Relating to the Carrying and Possession of Firearms, so as to Change Certain Provisions Relating to Carrying Deadly Weapons to or at Public Gatherings; Provide for Constables to Carry Pistols in Publicly Owned or Operated Buildings; Exempt Constables from the Prohibition of Carrying Weapons Within School Safety Zones, at School Functions, or on School Property; Change Certain Provisions Regarding the Transportation and Carrying of Certain Firearms; Prohibit the Carrying of Firearms and Other Weapons into Certain Buildings; Provide a Definition; Authorize the Carrying of Firearms in Certain Locations; Require the Timely Issuance of Firearm Licenses; Prohibit Certain Employers from Searching the Private Vehicles of Employees; Prohibit Employers from Conditioning Employment Based upon Certain Regulations Regarding the Possession of a Firearm; Provide Exceptions; Provide Certain Immunity for Employers; Provide for Civil Remedies; Provide for the Timely Issuance of Firearms Permits and Licenses; Provide for Remedies for Failure to Receive Firearms Permits or Licenses under Certain Circumstances; Prohibit the Consumption of Alcoholic Beverages while Carrying a Firearm Under Certain Circumstances; Amend Title 51 of the Official Code of Georgia Annotated, Relating to Torts, so as to Provide Certain Immunity from Liability for Certain Persons and Entities that Voluntarily and Without Compensation Assist State Agencies During Times of Declared Emergencies; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

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|-----------------|--|
| CODE SECTIONS:  | O.C.G.A. §§ 16-11-113 (new), 16-11-126 (amended), 16-11-127 (amended), 16-11-127.1 (amended), 16-11-129 (amended and new subsection added), 16-11-135 (new), 51-1-29.2 (amended)   |
| Bill Number:    | HB 89  |
| Act Number:     | 802  |
| Georgia Laws:   | 2008 Ga. Laws 802  |
| SUMMARY:        | HB 89 revises many of Georgia's gun laws. Under the new law, it is no longer a crime for individuals with a valid firearms license to carry a gun in a public park, on public transportation, or into many restaurants that serve alcohol. For those without a firearms license, but are eligible to receive one, the law expands car carry rights and shortens the timeframes for probate court judges to issue firearms licenses. The law also addresses many other areas of Georgia's code related to gun regulation by criminalizing straw purchases, increasing constable carry rights, and expanding civil tort immunity to organizations working under the direction of a state agency during a state of emergency. |
| Effective Date: | July 1, 2008   |

### *History*

Georgia Code section 16-11-126 restricts the manner in which individuals who are eligible for, but do not have, a Georgia firearms license may legally transport a loaded firearm in their motor vehicles.<sup>1</sup> Prior to the introduction of HB 89, the law required those without a license to transport a firearm “in an open manner and fully

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1. See O.C.G.A. § 16-11-126 (Supp. 2008).

exposed to view or in the glove compartment, console, or similar compartment of the vehicle.”<sup>2</sup> Critics argued that law-abiding Georgians should be able to put their gun wherever they feel they can best protect themselves and their families.<sup>3</sup>

An additional consideration in the introduction of this bill was to remove the ambiguity of what constitutes transporting a firearm in an open manner and what qualifies as a similar compartment to a glove box/console in varying models of cars.<sup>4</sup> The Georgia judiciary had taken a restrictive view of both statutory requirements. The Georgia Supreme Court in *Lindsey v. State* affirmed the conviction of a motorist whose firearm was located in the side compartment of the driver’s side door.<sup>5</sup> The court held that the defendant unlawfully concealed his weapon by keeping it in the door, and that the pocket was not a “similar compartment” because it did not incorporate the requirement of an enclosing lid or cover.<sup>6</sup> Additionally, the Georgia Court of Appeals held in *Moody v. State* that a defendant’s gun, which slightly protruded from under the seat of his vehicle, was not fully exposed and therefore qualified as a concealed weapon.<sup>7</sup>

For these reasons, Representative Timothy Bearden (R-68th) introduced HB 89, a bill that would authorize any person who is eligible for a Georgia firearm license to conceal a firearm anywhere inside his or her motor vehicle.<sup>8</sup> He stated the bill would give back a “small piece of the Second Amendment that has been deprived to so many law-abiding citizens over the last few years.”<sup>9</sup>

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2. O.C.G.A. § 16-11-126(d) (Supp. 2008).

3. See Video Recording of House Proceedings, Feb. 12, 2007 at 1 hr., 24 min., 26 sec. (remarks by Rep. Timothy Bearden (R-68th)), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_72682804,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_72682804,00.html) [hereinafter 2007 House Floor Video].

4. See *id.* at 1 hr., 34 min., 01 sec. (remarks by Rep. Kevin Levitas (D-82nd)).

5. See *Lindsey v. State*, 277 Ga. 772, 774-75 (2004).

6. *Id.* at 774.

7. See *Moody v. State*, 184 Ga. App. 768, 768-69 (1987).

8. HB 89 (07 LC 29 2555), as introduced, 2007 Ga. Gen. Assem.

9. See 2007 House Floor Video, *supra* note 3, at 1 hr., 24 min., 26 sec. (remarks by Rep. Timothy Bearden (R-68th)).

*Bill Tracking of HB 89*

This article summarizes the bill tracking of HB 89 in the 2007 and 2008 legislative sessions. The long history of this bill requires separate sections for each significant provision which was added, and in some instances, taken out.

*2007 Legislative Session**Consideration and Passage by the House*

HB 89 was originally introduced by Timothy Bearden (R-68th) in the 2007 legislative session.<sup>10</sup> The bill as introduced merely sought to eliminate restrictions of where Georgians who do not have a valid license to carry a concealed weapon, but who were eligible for such a permit, could keep firearms in their motor vehicles.<sup>11</sup> The bill was first read in the House on January 22, 2007.<sup>12</sup> After a second read on January 23, 2007, HB 89 was sent to the House Judiciary Committee–Non Civil.<sup>13</sup>

In committee, the bill was thoroughly debated. Representative Randal Mangham (D-94th) voiced concerns about the ability of children to get to a firearm if it was not locked in a glove compartment of an automobile.<sup>14</sup> Representative Bearden responded to this by stating that if citizens “want to lock it up in their box they can, or in the console.” He added, “[t]hey’re going to pay a heck of time trying to get it if they need it locked up. But that’s their decision.”<sup>15</sup> Representative Ed Setzler (R-35th) pointed out that under the current law, if he were to go on a hunting or camping trip with his young children, it would be illegal to “stuff [a firearm] in a pack or hide it somewhere else in the car where [his children]

10. HB 89 (07 LC 29 2555), as introduced, 2007 Ga. Gen. Assem.

11. *Id.*

12. State of Georgia House Final Composite Status Sheet, HB 89, Jan. 22, 2007 (Apr. 4, 2008).

13. *Id.* at Jan. 23, 2007.

14. Video Recording of House Proceedings, Jan. 29, 2007 at 1 hr., 05 min., 45 sec., (remarks by Rep. Randal Mangham (D-94th)), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_72682804,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_72682804,00.html) [hereinafter 2007 House Committee Video].

15. *Id.* at 1 hr., 09 min., 49 sec. (remarks by Rep. Timothy Bearden, (R-68th)).

couldn't get to it."<sup>16</sup> He further commented "I see a safety issue whereby firearms will be stored in an open view, absent this legislation."<sup>17</sup>

Ms. Alice Johnson, the director of Georgians for Gun Safety, also spoke in this committee meeting. Ms. Johnson opposed the bill "from the standpoint of law enforcement."<sup>18</sup> She expressed concerns about HB 89's impact on the ability of law enforcement to distinguish between law abiding citizens and someone who has criminal intent or who is in fact committing a crime simply by possessing a firearm.<sup>19</sup>

Mr. Ed Stone, president of GeorgiaCarry.org, expressed support for the bill.<sup>20</sup> Mr. Stone cited *Lindsey v. State*, 277 Ga. 772 (2004), and remarked that in that case, the Supreme Court of Georgia stated "an armed person does not comply with the mandate of the statute [Code section 16-11-126] unless his or her weapon is displayed so as to be visible to all observers."<sup>21</sup> Mr. Stone followed this up by stating, "short of duct tape to the forehead, I'm not sure how one accomplishes that."<sup>22</sup>

Representative Stephanie Benfield (D-85th) stated that "[t]his bill deals with law enforcement, but we haven't heard from [the] Sheriffs' Association or Police Association."<sup>23</sup> Representative Bearden responded that he had spoken with the Sheriffs' Association and that he was not aware of any complaints from police officers.<sup>24</sup> Finally, Vice Chairman Robert Mumford (R-95th) commented that he has had "long experience with this statute [O.C.G.A. § 16-11-126], both as a district attorney and as an attorney, and the single feature of this statute has always been that it has been unintelligible."<sup>25</sup> He went on to express support for the bill because

16. *Id.* at 1 hr., 11 min., 27 sec. (remarks by Rep. Ed Setzler (R-35th)).

17. *Id.* at 1 hr., 12 min., 27 sec.

18. *Id.* at 1 hr., 12 min., 50 sec. (remarks by Ms. Alice Johnson, Director, Georgians for Gun Safety).

19. *Id.*

20. 2007 House Committee Video, *supra* note 14, at 1 hr., 14 min., 40 sec. (remarks by Mr. Ed Stone, president of GeorgiaCarry.org).

21. *Id.*

22. *Id.*

23. *Id.* at 1 hr., 19 min., 15 sec. (remarks by Rep. Stephanie Benfield (D-85th)).

24. *Id.* at 1 hr., 20 min., 7 sec. (remarks by Rep. Timothy Bearden (R-68th)).

25. 2007 House Committee Video, *supra* note 14, at 1 hr., 20 min., 36 sec. (remarks by Vice Chairman Robert Mumford (R-95)).



of its potential to clarify the law.<sup>26</sup> He expressed disappointment that none of the law enforcement agencies had spoken about their opinion of the bill and noted that their failure to speak is one of the reasons that he intended to vote for HB 89.<sup>27</sup> Ultimately, the bill was favorably reported to the Rules Committee by a vote of 12 to 5.<sup>28</sup>

After a third reading on the House floor on February 12, 2007, HB 89 was scheduled for a debate and a floor vote.<sup>29</sup> Debate on the 2007 House floor over HB 89 was vigorous. Many of the same concerns raised in the committee meeting were raised on the House floor.

Representative Alisha Thomas Morgan (D-39th) asked whether the author of the bill had considered the safety of police officers in drafting HB 89.<sup>30</sup> Representative Bearden responded that he “would never endorse nor . . . author a bill that would endanger any of [his] brothers and sisters in law enforcement.”<sup>31</sup> Further, Representative Morgan asked the author how he responded to “the fact that a gun in a car increases the access for a child to get access to that gun?”<sup>32</sup> Representative Bearden responded that children still have access to a gun under current law because the “current law says [a firearm] can be in the front seat, open view.”<sup>33</sup> He continued, “I think a firearm that’s hidden is a lot safer than one in plain view.”<sup>34</sup>

Representative Kevin Levitas (D-82nd) commented “[i]s it not true that the problem this [bill] solves is that if you have a gun in plain view under the current statute and a little bit of that handle winds up getting tucked under the seat, even if it’s in plain view, you would be in violation of this statute [O.C.G.A. § 16-11-126]?”<sup>35</sup> Representative Bearden responded “[y]es sir, that’s correct and you could go to jail.”<sup>36</sup>

26. *Id.*

27. *Id.*

28. 2007 House Committee Video, *supra* note 14, at 1 hr., 22 min., 43 sec. (remarks by Chairman David Ralston (R-7th)).

29. State of Georgia House Final Composite Status Sheet, HB 89, Feb. 12, 2007 (Apr. 4, 2008).

30. See 2007 House Floor Video, *supra* note 3, at 1 hr., 28 min., 39 sec. (remarks by Rep. Alisha Morgan (D-39th)).

31. See *id.* at 1 hr., 29 min., 01 sec. (remarks by Rep. Timothy Bearden (R-68th)).

32. See *id.* at 1 hr., 30 min., 05 sec. (remarks by Rep. Alisha Morgan (D-39th)).

33. See *id.* at 1 hr., 30 min., 20 sec. (remarks by Rep. Timothy Bearden (R-68th)).

34. See *id.* at 1 hr., 30 min., 25 sec. (remarks by Rep. Timothy Bearden (R-68th)).

35. See *id.* at 1 hr., 34 min., 01 sec. (remarks by Rep. Kevin Levitas (D-82nd)).

36. See 2007 House Floor Video, *supra* note 3, at 1 hr., 34 min., 15 sec. (remarks by Rep. Timothy Bearden (R-68th)).

After the author left the well to answer questions on HB 89, other members of the House spoke on the bill. Representative Stephanie Benfield was perhaps the most comprehensive in stating her opposition to HB 89. Representative Benfield stated she opposed HB 89 on four main grounds: (1) she thought the current law was clear; (2) she felt the bill endangered the lives of law enforcement officers; (3) she pointed out that no law enforcement officers had come to the committee meeting to speak in favor or in opposition to the bill; and (4) she felt the bill endangered the lives of children.<sup>37</sup> Representatives Michele Henson (D-87th),<sup>38</sup> Randal Mangham (D-94th),<sup>39</sup> and Carolyn Hugley (D-133rd)<sup>40</sup> also spoke in opposition to the bill, voicing many of the same concerns raised by Representative Benfield. Representative Alan Powell (D-29th) spoke in favor of HB 89 stating that he understood the objections raised by the various speakers but that the bill was supported by the Second Amendment to the Constitution.<sup>41</sup> Representative Tom Graves (R-12th) echoed a similar sentiment urging that the bill was in line with the Second Amendment and that it was positive legislation because it supported personal liberty.<sup>42</sup> When the bill came to a vote, it passed the House by a 130 to 38 margin.<sup>43</sup> The bill was then sent to the Senate.

### *Consideration by the Senate*

The Senate significantly added to HB 89 in 2007. The Senate added provisions which originally were parts of other bills, and the changes were the subject of vigorous debate.

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37. See *id.* at 1 hr., 36 min., 06 sec. (remarks by Rep. Stephanie Benfield (D-85th)).

38. See *id.* at 1 hr., 56 min., 51 sec. (remarks by Rep. Michele Henson (D-87th)).

39. See *id.* at 2 hr., 6 min., 13 sec. (remarks by Rep. Randal Mangham (D-94th)).

40. See *id.* at 2 hr., 27 min., 16 sec. (remarks by Rep. Carolyn Hugley (D-133rd)).

41. See *id.* at 2 hr., 1 min., 14 sec. (remarks by Rep. Alan Powell (D-29th)).

42. See 2007 House Floor Video, *supra* note 3, at 2 hr., 4 min., 55 sec. (remarks by Rep. Tom Graves (R-12th)).

43. State of Georgia House Final Composite Status Sheet, HB 89, June 5, 2007 (Apr. 4, 2008).

*Guns in Parking Lots Provision*

In 2007, the Senate inserted language similar to that found in a previously introduced Senate bill, SB 43, to HB 89.<sup>44</sup> That provision is now part of section 7 of the final 2008 HB 89 which added a new section, 16-11-135, to the Code.<sup>45</sup> Section 7 includes a modified version of the original language from SB 43, as well as several provisions not contained in the original SB 43. This section, among other things, essentially prevents an employer from establishing rules or policies that effectively prohibit employees from storing firearms in their locked private vehicles while parked in the employer's lot or other employee parking area.<sup>46</sup>

Section 7 of the Act was originally sponsored by Chip Rogers (R-21st) during the 2007 session, as Section (a) of SB 43 which would have amended Code section 16-11-35.<sup>47</sup> Its purpose was to prevent an employer from establishing rules or policies prohibiting employees from storing firearms in their private vehicles while locked and parked in the employer's lot or other employee parking area.<sup>48</sup> The initial exceptions to the prohibition included: if the employer maintained secure parking areas restricting public access; if the vehicle was owned or leased by the employer and the employee used it in the course of business; if the employee was restricted from possessing a firearm due to pending or past disciplinary action; if the employer is a penal institution or similar confinement facility; or if possessing a firearm on the premises was prohibited by state or federal law.<sup>49</sup> Section (c) of SB 43 also provided limited employer liability from civil actions for damages "resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm" pursuant to that section.<sup>50</sup>

The Senate Rules Committee attached a substitute on February 9, 2007, adding defense contractors operating on or contiguous with

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44. Compare SB 43 (LC 35 0367), 2007 Ga. Gen. Assem., with SB 43 (SJC LC 29 2690S), 2007 Ga. Gen. Assem.

45. O.C.G.A. § 16-11-135 (Supp. 2008).

46. *Id.*

47. See SB 43 (LC 35 0367), 2007 Ga. Gen. Assem.

48. See *id.*

49. *Id.* at §§(b)(1)-(5).

50. *Id.* at §(c).

military bases to the list of excepted employers while amending the language of section 1(c) to further limit employer liability.<sup>51</sup> The Georgia Chamber of Commerce (GCC) opposed SB 43, believing it unnecessarily infringed on the rights of property owners.<sup>52</sup> The GCC also worried that it would result in “catch-22” liability for employers by blocking employers from enacting policies restricting gun access while not removing liability for employers that “should have known” weapons in the workplace would be used in a crime.<sup>53</sup> Still, SB 43 failed to pass the Senate independently and its contents were subsequently attached to HB 89.<sup>54</sup>

The Senate version of HB 89 added not only the original SB 43 to the bill, it also made changes to SB 43 by adding several new sections.<sup>55</sup> Section 3(a) was changed to prohibit employers from establishing any rule or policy allowing an employer to *search* the locked private vehicles of any employee or guest on the property.<sup>56</sup> Language was also added to make the rule applicable to state employers.<sup>57</sup> Section 3(b) was added and prohibited employers from conditioning employment on a promise not to store a firearm in the employee’s locked private vehicle.<sup>58</sup> Section 3(c) was also added, allowing employers to search employee vehicles if requested by police pursuant to a warrant,<sup>59</sup> if the employer owned or leased the vehicle,<sup>60</sup> or if entering the vehicle was reasonably believed to be necessary to prevent physical harm.<sup>61</sup> Section 3(d) was then added to allow employers to search a vehicle or prohibit firearms for any of the exceptions listed in the original SB 43, in addition to a new

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51. SB 43 (LC 29 2690S), §(5), 2007 Ga. Gen. Assem.

52. Ga. Chamber of Comm., *Urgent Alert to Business: Oppose SB 43*, TOP NEWS, Mar. 21, 2007, <http://www.northfultontimes.com/bm-doc/jcc-volume-1-issue-8.pdf> [hereinafter GCC Urgent Alert].

53. *Id.*

54. Carlos Campos, *Trial Lawyers Oppose Gun Bill: Measure Would Let Workers Keep Firearms in Cars*, ATLANTA J.-CONST., Apr. 14, 2007, available at 2007 WLNR 7106416.

55. See HB 89 (LC 28 3747S), 2007 Ga. Gen. Assem.

56. *Id.* at § 3(a).

57. *Id.*

58. *Id.* at § 3(b). The firearm, however, had to be concealed in the trunk, glove box, or other concealed compartment of the vehicle.

59. See *id.* at § 3(c)(1). Exception for warrantless searches based on probable cause or exigent circumstances.

60. *Id.* at § 3(c)(2).

61. HB 89 (LC 28 3747S), § 3(c)(3), 2007 Ga. Gen. Assem.

exception for public utility employers.<sup>62</sup> Employers providing secure parking areas could conduct searches of vehicles entering their lot so long as they were conducted on a “uniform and frequent basis.”<sup>63</sup>

The 2007 Senate substitute to HB 89 also modified the vicarious liability of employers for incidents involving firearms.<sup>64</sup> The modification removed criminal and civil liability, even shielding employers from liability if an employee’s firearm was stolen from their vehicle.<sup>65</sup> The change allowed for liability only if the employer “knew” the person would commit a crime on the premises, versus if the employer “should have known.”<sup>66</sup> Language was also added stating that the bill was not to be interpreted as creating any new employment rights for at will employees.<sup>67</sup> Other provisions addressing the bill’s implications for employer liability were added. Section 3(f) stated that efforts to comply with the bill would constitute a complete defense for the employer, property owner, or property owner’s agent against liability.<sup>68</sup> The plaintiff in a suit “relating to” liability of the employer, property owner, or their agents for the criminal use of firearms on the property would be responsible for their legal costs if the defendants prevailed.<sup>69</sup> It was also stated that the bill created no duties for the employer to implement additional security measures and that evidence of remedial security measures would be not be admissible to show liability.<sup>70</sup> Finally, section 3(i) provided that only the Attorney General could prosecute employers for conducting prohibited searches of employee vehicles.<sup>71</sup> These provisions were included in the final version of section 7 of HB 89.<sup>72</sup>

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62. *Id.* at § 3(d)(3).

63. *Id.* at § 3(d)(1).

64. *Id.* at § 3(e).

65. *Id.*

66. *See id.*

67. HB 89 (LC 28 3747S), § 3(e), 2007 Ga. Gen. Assem.

68. *Id.* at § 3(f).

69. *Id.* at § 3(g).

70. *Id.* at § 3(h).

71. *Id.* at § 3(i).

72. O.C.G.A. § 16-11-135 (Supp. 2008).

### *State of Emergency Provision*

The Senate also added in 2007 what is now section 8 of HB 89, which extends civil immunity to disaster relief organizations providing services or goods in times of natural disaster or emergency.<sup>73</sup> This portion of HB 89 originated from section 2 of SB 305. SB 305 was addressed in the 2008 Legislative session, but failed to pass. When asked how this provision relates to firearms, author Representative Bearden responded that he did not know, but he liked it, so the House kept the provision in.<sup>74</sup>

### *Vicarious Liability Provision*

During HB 89's time in the Senate in 2007, a controversial section was added to the bill which would have significantly limited the doctrine of respondeat superior in Georgia.<sup>75</sup> The purpose of this was to amend Code section 51-11-22 relating to general provisions concerning tort defenses.<sup>76</sup> This section would have shielded employers from any and all liability for harm resulting from the acts or omissions of their employees.<sup>77</sup> This would have effectively ended the doctrine of respondeat superior in Georgia except where the employer had actual knowledge and authorized the employee's act or omission, or when the employer or other high level officer's actions constituted gross negligence as demonstrated by clear and convincing evidence.<sup>78</sup> However, after much opposition from interest groups such as the Georgia Trial Lawyers Association, this section was taken out.<sup>79</sup>

Thus, the Senate's final version of HB 89 in the 2007 session was a substitute containing the original House provisions regarding firearms in automobiles, as well as additional provisions regarding

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73. HB 89 (LC 28 3747S), § 8, 2007 Ga. Gen. Assem.

74. Interview with Timothy Bearden, Georgia State Representative (R-68th), Georgia General Assembly, in Atlanta, Ga. (Mar. 27, 2008) [hereinafter Bearden Interview].

75. See HB 89 (SCS) (LC 28 3707S), § 5, 2007 Ga. Gen. Assem.

76. *Id.*

77. *Id.*

78. *Id.*

79. Carlos Campos, *Legislature 2007: Committee OK's Gun-In-Car Bill*, ATLANTA J.-CONST., Apr. 17, 2007, at B4.

employers' ability to establish certain policies restricting employees from keeping firearms in their cars while at work, and the provision pertaining to civil immunity to certain parties in states of emergency.<sup>80</sup> The bill received a favorable report from the Senate's Rules Committee on April 16, 2007 and was ready to go to the Senate floor.<sup>81</sup> The bill never made it to the Senate floor in 2007, however, because the tragic shootings at Virginia Tech chilled the climate surrounding expansive gun legislation.<sup>82</sup>

### *2008 Legislative Session*

HB 89 was revived by the Senate at the start of the 2008 Georgia legislative session. On January 14, 2008 the bill was recommitted to the Senate Judiciary committee. In committee the bill went through some significant changes.

#### *The Parks, Historic Sites, and Recreational Areas Amendment*

The 2008 Senate added language to the original part of HB 89 devoted to where guns could be carried in cars.<sup>83</sup> The amendment adds the language "[a]ny person having been issued a license to carry a concealed weapon pursuant to Code Section 16-11-129 shall be permitted to carry such weapon, subject to the limitations of this part, in all parks, historic sites, or recreational areas as defined by Code Section 12-3-10."<sup>84</sup> Code section 12-3-10 defines the term "park, historic site, or recreational area" as "a park, historic site, or recreational area which is operated by or for and is under the custody and control of the department [of Natural Resources]."<sup>85</sup>

The motivating factor in the introduction of this language was the abduction and murder of twenty-four year old hiker Meredith Emerson.<sup>86</sup> Emerson was hiking in the north Georgia mountains

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80. HB 89 (SCS) (LC 28 3747S), 2007 Ga. Gen. Assem.

81. State of Georgia House Final Composite Status Sheet, HB 89, Apr. 16, 2007 (Apr. 4, 2008).

82. Bearden Interview, *supra* note 74.

83. HB 89 (LC 38 0516S), § 3(c), 2008 Ga. Gen. Assem.

84. *Id.*, codified at O.C.G.A. § 16-11-126 (Supp. 2008).

85. O.C.G.A. § 12-3-10(a) (2006).

86. Bearden Interview, *supra* note 74.

when she went missing on New Year's Day, 2008.<sup>87</sup> Her body was found several days later in the Dawson Forest Wildlife Management Area.<sup>88</sup> Gary Michael Hilton later pled guilty to her murder, reportedly in a deal to avoid the death penalty.<sup>89</sup> State Representative Bobby Reese (R-98th) invoked her name in posing a question to Representative Bearden during the House floor debate, stating: "Is it not true also that if she chose, on her own free will, to arm herself, possibly with a handgun, at that time, being by herself in the woods, that she may, uh, very well be alive today?"<sup>90</sup> Bearden replied, "[t]hat is that chance, but, as a law abiding citizen, she was forced to disarm, just like anyone else would be forced to disarm if they want to go for a hike."<sup>91</sup>

### *Guns in Parking Lots Amendment*

In 2008, the Senate Rules Committee attached substantially the same language offered by the Senate Judiciary Committee (as a substitute in the 2007 session) concerning employer rules prohibiting employees from storing firearms in their private vehicles in the employer's lot.<sup>92</sup> Initially attached as section 3, the final version of HB 89 contains these restrictions and exceptions in section 7.<sup>93</sup> With the numerous exceptions allowed under the current section 7 of HB 89, that portion of the bill is "extremely watered down" and does little to change the current law in the state.<sup>94</sup>

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87. *Hilton Pleads Guilty, Gets Life for Killing Hiker*, CNN, Jan. 31, 2008, <http://www.cnn.com/2008/CRIME/01/31/hilton.plea/index.html#cnSTCText> [hereinafter *Hilton Article*].

88. Mike Phelan & Tristan Smith, *Officials: Hiker Was Alive for Days; Suspect Now Faces Murder Charge*, CNN, Jan. 8, 2008, <http://www.cnn.com/2008/CRIME/01/08/georgia.hiker/index.html#cnSTCText>.

89. *Hilton Article*, *supra* note 87.

90. See Video Recording of House Proceedings, Jan. 31, 2008 at 1 hr., 44 min., 15 sec. (remarks by Rep. Bobby Reese (R-98th)), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_103744292,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_103744292,00.html) [hereinafter 2008 House Floor Video].

91. *Id.* at 1 hr., 44 min., 31 sec. (remarks by Rep. Timothy Bearden (R-68th)).

92. Compare SB 43 (SJC) (LC 29 2690S), 2007 Ga. Gen. Assem., with HB 89 (LC 38 0516S), § 6, 2008 Ga. Gen. Assem.

93. See HB 89 (LC 28 3747S), § 3, 2007 Ga. Gen. Assem.; HB 89 (AP), § 7, 2008 Ga. Gen. Assem., codified at O.C.G.A. § 16-11-135 (Supp. 2008).

94. Bearden Interview, *supra* note 74.



### *The Bloomberg Amendment*

This section of the bill added in the Senate Judiciary committee, colloquially known as the Bloomberg Amendment,<sup>95</sup> was originally part of HB 915.<sup>96</sup> Its introduction was prompted by the actions of New York City Mayor Michael Bloomberg, who in 2006 hired and dispatched private investigators to gun dealers in Georgia, Virginia, Ohio, South Carolina and Pennsylvania to entice dealers to sell weapons through straw purchases.<sup>97</sup> So-called straw purchases occur when an individual submits to the federally required background check for a gun that is clearly going to be used by someone else.<sup>98</sup> The goal was to prove that out-of-state weapons sales contributed to gun related crimes in New York City.<sup>99</sup> The city filed civil lawsuits against several of the gun dealers and the proceedings garnered national press attention.<sup>100</sup> HB 89 adds a new Code section, 16-11-113, outlawing such sting operations and protecting Georgia gun dealers from deceptive behavior by private investigators.<sup>101</sup>

### *License to Carry Amendment*

This section of the bill was also added by the Senate Rules Committee.<sup>102</sup> This addition amends Code section § 16-11-129, dealing with the issuance and renewal of Georgia's concealed firearms permit.<sup>103</sup> The change imposes a time requirement of two days on probate court judges to issue a request for a criminal history and background check from law enforcement, and impose a deadline of thirty days on the law enforcement agency to report back to the judge or else a rebuttable presumption of a clear record would be

95. *Id.*

96. See HB 915 (SCS) (LC 28 3829), § 2, 2008 Ga. Gen. Assem.

97. Susan Jones, *ATF Probing Mayor Bloomberg's 'Rogue Gun Sting'*, CNSNEWS.COM, Feb. 7, 2007, <http://www.cnsnews.com/ViewNation.asp?Page=/Nation/archive/200702/NAT20070207c.html>.

98. Diane Cardwell, *Georgia Gun Dealers Settle Suit Brought by New York City*, N.Y. TIMES, Aug. 1, 2006, available at <http://www.nytimes.com/2006/08/01/nyregion/01guns.html>.

99. See generally Jones, *supra* note 97.

100. See *Id.*; Cardwell, *supra* note 98.

101. O.C.G.A. § 16-11-113 (Supp. 2008).

102. HB 89 (LC 38 0516S), § 4, 2008 Ga. Gen. Assem.

103. *Id.*, codified at O.C.G.A. § 16-11-129 (Supp. 2008).

established.<sup>104</sup> This section also places a deadline of ten days after receiving the background report for the probate judge to issue the license unless facts of ineligibility have been found, the judge determines all qualifications were not met, or that the applicant lacks “good moral character.”<sup>105</sup> This section also allows the probate judge to extend the ten-day period if the judge believes the background report warrants further investigation. Such extension is required to be on an “expedited” basis.<sup>106</sup> This section speeds up the process for the issuance and renewal of permits while attempting to make sure the appropriate background checks are completed first.<sup>107</sup>

### *Mandamus Action*

The final addition to HB 89 also dealt with probate court judges and their issuance of Georgia firearm permits. Section 6(j) revised section 16-11-129 of the Code to provide eligible applicants who failed to receive their license a cause of action in mandamus against probate judges to obtain their license.<sup>108</sup> This was introduced to address instances in the past where “law abiding citizens have waited anywhere from six months, and a few people have waited up to two years, to receive a Georgia firearms license permit.”<sup>109</sup>

Representative Bearden saw this as a step in the right direction to move concealed weapons license issuance out of the hands of probate judges and into a more formalized structure, such as the one in which driver’s licenses are issued.<sup>110</sup> Further, as the current system for the issuance of firearms licenses by probate judges is a remnant of the Jim Crow laws, some feel it is time to modernize the process.<sup>111</sup> This section leaves the process in the hands of probate judges but also

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104. O.C.G.A. § 16-11-129 (Supp. 2008).

105. *Id.* “Good moral character” is not defined by O.C.G.A. § 16-11-129, thus the probate judge is left with some discretion under the new provision. *Id.*

106. *Id.*

107. *Id.*

108. HB 89 (CCR) (LC 28 4343S), § 6(j), 2008 Ga. Gen. Assem., codified at O.C.G.A. § 16-11-129 (Supp. 2008).

109. See 2008 House Floor Video, *supra* note 90, at 1 hr., 21 min., 14 sec. (remarks by Rep. Timothy Bearden (R-68th)).

110. Bearden Interview, *supra* note 74.

111. *Id.*

provides applicants with a remedy in the event a judge fails to issue a permit without good reason.<sup>112</sup>

### *Senate Floor Passage*

The Senate Judiciary Committee favorably reported the bill on January 16, 2008.<sup>113</sup> The bill went to the floor of the Senate the next day. Four amendments were offered on the floor, two of which came to a vote, but all of them ultimately failed.

The first amendment, offered by Senator David Adelman (D-42nd), sought to insert language into the bill that would expressly clarify that persons in legal control of property through a “lease, rental agreement, a contract, or any other agreement” had the same rights as a private property owner under the bill.<sup>114</sup> The amendment never made it to the floor for a vote. The second amendment, offered by Senator Emanuel Jones (D-10th), sought to extend vicarious liability protection arising from the enforcement of this bill to employees, as employers, property owners, and property owner’s agents were already protected.<sup>115</sup> This amendment went to a floor vote but was defeated by a vote of 15 to 41.<sup>116</sup> The third amendment, offered by Senator Kasim Reed (D-35th), sought to increase the time given to probate court judges, to request a background and criminal history check from law enforcement after the receipt of an application or request for a license renewal, from two business days to five.<sup>117</sup> The adoption of this amendment went to a vote on the floor, but failed 21 to 35.<sup>118</sup> Senate floor amendment four to HB 89 was yet another attempt by Senator Jones to extend protections given to employers and landowners under the bill to “customers, employer’s agents, contract workers, vendors, [and] suppliers.”<sup>119</sup> However, this amendment never received a floor vote.

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112. O.C.G.A. § 16-11-129 (Supp. 2008).

113. State of Georgia House Final Composite Status Sheet, HB 89, Jan. 16, 2008 (Apr. 4, 2008).

114. HB 89 (FSFA) (08 AM 28 0849), 2008 Ga. Gen. Assem.

115. HB 89 (FSFA) (08 HB 89 sen floor amend 2), 2008 Ga. Gen. Assem.

116. Georgia Senate Voting Record, HB 89, Senate Vote #516 (Jan. 17, 2008).

117. HB 89 (FSFA) (08 HB 89 sen floor amend 3), 2008 Ga. Gen. Assem.

118. Georgia Senate Voting Record, HB 89, Senate Vote #517 (Jan. 17, 2008).

119. HB 89 (FSFA) (08 HB 89 sen floor amend 4), 2008 Ga. Gen. Assem.

After the defeat of all the amendments offered by Senate Democrats, the bill as substituted by the Senate Rules Committee went to a vote on the floor unchanged. The bill passed 41 to 15.<sup>120</sup>

### *Back to the House*

HB 89 then went back to the House considerably changed from when it left. On January 31, 2008, Representative Bearden went to the floor of the House with the bill and offered his own amendment to the bill that passed the Senate in order “to do something meaningful for Georgia Firearm license holders.”<sup>121</sup> After an extended floor debate the amendment containing several significant additions passed by a vote of 111 to 58.<sup>122</sup>

### *Public Gatherings Amendment*

The most significant change that Bearden sought in the Senate bill amended the public gathering restriction in the Georgia Code. Before HB 89, individuals with a valid firearms permit were prohibited from carrying a firearm into an “athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises.”<sup>123</sup> Bearden’s proposed amendment removed the public gathering exception and replaced it with “prohibited building.”<sup>124</sup> Prohibited buildings would then be defined as buildings housing “athletic or sporting events, political rallies or functions, government offices, or establishments at which alcoholic beverages are sold for consumption on the premises and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food.”<sup>125</sup> These changes and others would have allowed individuals with a Georgia firearms permit to carry their weapons at churches or church

120. Georgia Senate Voting Record, HB 89, Senate Vote #518 (Jan. 17, 2008).

121. See 2008 House Floor Video, *supra* note 90, at 1 hr., 24 min., 40 sec. (remarks by Rep. Timothy Bearden (R-68th)); HB 89 (HFA) (08 AM 28 08522007), § 4, 2008 Ga. Gen. Assem.

122. Georgia House of Representatives Voting Record, HB 89, House Vote #523 (Jan. 31, 2008).

123. O.C.G.A. § 16-11-127(b) (Supp. 2008).

124. HB 89 (HFA) (08 AM 28 08522007), § 4, 2008 Ga. Gen. Assem.

125. *Id.*

functions, publicly owned and operated buildings that are not government offices, and establishments like restaurants that serve alcohol but do not derive a majority of their revenues from such sales, as well as in state parks and on public transportation.<sup>126</sup>

Bearden stated in the floor debate that he sought to eliminate the public gathering prohibition because “Georgia is the most restrictive state for law-abiding citizens with [a] firearms license permits in the nation.”<sup>127</sup> Moreover, he wanted the change made because of the provision’s origin as a 138-year old Jim Crow law.<sup>128</sup> Supporters of the change argue the restriction was put in place specifically for the reason of preventing African-Americans from carrying firearms.<sup>129</sup> In 1868, white members of the Georgia Legislature expelled all the black members on the premise that the state constitution did not allow them to hold office. Black Republicans staged a protest march that passed through Camilla, Georgia while carrying sticks, shotguns, and other weapons.<sup>130</sup> The county sheriff formed a posse and staged an ambush for the marchers that culminated in nine dead and over thirty wounded.<sup>131</sup> A law restricting the carrying of weapons at “public gatherings” was then passed to prevent protesters from carrying arms, while still allowing pseudo militia groups, like the posse, to carry weapons.<sup>132</sup>

Under modern Georgia law, there has been significant debate over what constitutes a public gathering. Neil Chiders, a Georgia Senior Assistant Attorney General, was even pressed into issuing an opinion to address the issue.<sup>133</sup> It was his understanding that the public gathering law focuses “not on the place but the gathering of people, and that the prohibition against carrying a weapon applies to situations ‘when people are gathered or will be gathered for a

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126. *Id.*

127. See 2008 House Floor Video, *supra* note 90, at 1 hr., 28 min., 21 sec. (remarks by Rep. Timothy Bearden (R-68th)).

128. *Id.* at 1 hr., 29 min., 41 sec.

129. Bearden Interview, *supra* note 74.

130. Digital Library of Georgia, *Civil Unrest in Camilla, Georgia, 1868*, <http://dlg.galileo.usg.edu/camilla/camilla-history.php> (last visited Sept. 28, 2008).

131. *Id.*

132. See 2008 House Floor Video, *supra* note 90, at 1 hr., 29 min., 41 sec. (remarks by Rep. Timothy Bearden (R-68th)).

133. Ga. Op. Att’y Gen. U96-22 (unofficial) (Oct. 25, 1996) (citing *State v. Burns*, 200 Ga. App. 16 (1991)), 1996 WL 665769.

particular function and not when a weapon is carried lawfully to a public place, where people may gather.”<sup>134</sup> This interpretation is more expansive than the one in Code section 16-11-127 prior to HB 89.<sup>135</sup> Bearden’s amendment sought to legislatively settle the ambiguity by removing the language and replacing it with defined circumstances that needed no prosecutorial interpretation.<sup>136</sup>

### *Probate Court’s Issuance of Licenses*

Bearden’s amendment also sought to strike several lines from the Senate bill and replace it with language which would timestamp the information that a probate judge receives from law enforcement concerning an applicant’s suitability, and would give him ten days to issue the license unless the report contains information that requires further investigation.<sup>137</sup> Bearden said that he “worked very closely with the probate court judges, they are fine with this [change].”<sup>138</sup>

### *Disagreement and Conference Committee*

The Senate disagreed with Representative Bearden’s amendments as passed by the House, but the House insisted.<sup>139</sup> In early February 2008, both the Senate and House appointed a conference committee to work out the differences between the two bills.<sup>140</sup> The bill stalled in committee for several months as the two bodies contested Representative Bearden’s additions. As the last week of the 2008 legislative session rolled around, Republican senators attempted to revive the gun debate by amending HB 257. HB 257 was originally intended to allow Magistrate Court constables to carry guns in public buildings.<sup>141</sup> It was amended to allow Georgians with a concealed weapons permit to carry firearms on public transportation and in

134. *Id.*

135. *Id.*

136. See HB 89 (HFA) (08 AM 28 08522007), § 4, 2008 Ga. Gen. Assem.

137. See *id.* at § 5.

138. See 2008 House Floor Video, *supra* note 90, at 1 hr., 26 min., 58 sec. (remarks by Rep. Timothy Bearden (R-68th)).

139. See Georgia General Assembly, HB 89, Bill Tracking, [http://www.legis.state.ga.us/legis/2007\\_08/sum/hb89.htm](http://www.legis.state.ga.us/legis/2007_08/sum/hb89.htm) [hereinafter Bill Tracking].

140. *Id.*

141. See HB 257, as introduced, 2008 Ga. Gen. Assem.

restaurants so long as no alcohol was consumed by the individual carrying the gun.<sup>142</sup> HB 257 passed the Senate on April 2, 2008, and on the final day of the legislative session there were two bills on the table to expand gun rights in Georgia.<sup>143</sup>

On the final day of the 2008 legislative session, another version of HB 89 made it out of conference committee.<sup>144</sup> The committee changed the bill by removing the portions of the legislation that would have allowed carrying in churches and at public gatherings because of problems some had with the language.<sup>145</sup> The conference committee report (hereinafter "CCR") included the language (allowing constables to carry in public buildings) from HB 257 as it was originally introduced because it had become tangled up in the gun debate.<sup>146</sup>

The CCR first came to the floor of the Senate, where Senator Chip Rogers (R-21st) quickly gave the conference report, answered a couple questions, and then vacated the well.<sup>147</sup> Senator Tommie Williams (R-19th) then moved immediately for a vote preventing any opponents from raising concerns with the bill.<sup>148</sup> Cutting off the debate caused a thirty second shouting match on the floor between Senator Steve Thompson (D-33rd) and Senator Williams, but the CCR was ultimately adopted the by a vote of 40 to 15.<sup>149</sup> As quickly

142. See Andrea Jones, *Senate OKs Concealed Guns in Eateries, MARTA*, ATLANTA J.-CONST., Apr. 3, 2008, at A1, available at [http://www.ajc.com/metro/content/metro/stories/2008/04/02/guns\\_0403.html?cxntlid=homepage\\_tab\\_newstab](http://www.ajc.com/metro/content/metro/stories/2008/04/02/guns_0403.html?cxntlid=homepage_tab_newstab).

143. See Georgia General Assembly, HB 257, Bill Tracking, [http://www.legis.state.ga.us/legis/2007\\_08/sum/hb257.htm](http://www.legis.state.ga.us/legis/2007_08/sum/hb257.htm).

144. See Georgia General Assembly, HB 89, Bill Tracking, [http://www.legis.state.ga.us/legis/2007\\_08/sum/hb89.htm](http://www.legis.state.ga.us/legis/2007_08/sum/hb89.htm).

145. See Video Recording of House Proceedings, Apr. 4, 2008 (remarks by Rep. Timothy Bearden (R-68th)).

146. HB 89 (CCR), § 4, 2008 Ga. Gen. Assem.

147. See Video Recording of Senate Proceedings, Apr. 4, 2008 at IV, 2h., 06 min., 01 sec. (remarks by Sen. Chip Rogers (R-21st)), [hereinafter 2008 Senate CCR Adoption Video].

148. See Political Insider, *Gun Bill Passes Senate in a Hurry, and it was All Over but the Shouting*, ATLANTA J.-CONST., Apr. 4, 2008, available at [http://www.ajc.com/metro/content/shared-blogs/ajc/politicalinsider/entries/2008/04/04/gun\\_bill\\_passes\\_senate\\_in\\_a\\_hu.html](http://www.ajc.com/metro/content/shared-blogs/ajc/politicalinsider/entries/2008/04/04/gun_bill_passes_senate_in_a_hu.html).

149. See Georgia Senate Voting Record, HB 89, Senate Vote #1035 (Apr. 4, 2008); Valarie Edwards, *HB 89—Gun Bill—Passes in House, Senate*, GA. PUB. BROAD. NEWS, Apr. 4, 2008, available at <http://gpbnews.blogspot.com/2008/04/hb-89-gun-bill-passes-in-house-senate.html>

as the conference report was adopted by the Senate, it passed the House in even less time by a vote of 106 to 57.<sup>150</sup>

### *The Act*

The relatively simple bill introduced in the 2007 legislative session that was HB 89 has grown considerably over the last two terms. In its final form, the Act has nine sections which affect six Georgia code sections. Separate discussion of these sections is necessary to provide clarity.

#### *Section 1: Title*

Although the Act encompasses a wide range of related topics surrounding firearms, the title of the legislation is the “Business Security and Employee Privacy Act.”<sup>151</sup>

#### *Section 2: The Bloomberg Amendment*

Section 2 of the Act adds Code section 16-11-113, creating a new criminal offense in Georgia.<sup>152</sup> The Act makes it a felony for an individual to “solicit, persuade, encourage, or entice” a firearms dealer to sell or convey a gun to anyone other than the end purchaser.<sup>153</sup> Moreover, it makes any individual who aids and abets the individual guilty of the same offense. This law seeks to criminalize straw purchases in Georgia.<sup>154</sup>

#### *Section 3: Carrying a Concealed Weapon*

Section 3 of the Act amends Code section 16-11-126, the provision providing the offense of carrying a concealed weapon. The Code section is altered in two ways, both loosening the provision. First, the Act adds to subsection (c) the provision that “[a]ny person having

150. Georgia House of Representatives Voting Record, HB 89, House Vote #1109 (Apr. 4, 2008).

151. HB 89 (AP), § 1, 2008 Ga. Gen. Assem.

152. O.C.G.A § 16-11-113 (Supp. 2008).

153. *Id.*

154. *Id.*



been issued a license to carry a concealed weapon pursuant to Code Section 16-11-129 shall be permitted to carry such weapon, subject to the limitations of this part, in all parks, historic sites, or recreational areas as defined by Code Section 12-3-10 and in all wildlife management areas.”<sup>155</sup> This addition was prompted by the murder of hiker Meredith Emerson.<sup>156</sup>

Second, the Act strikes the requirement that those who are eligible for a concealed carry permit, but who do not have one, must transport a loaded firearm in a private passenger motor vehicle “in an open manner and fully exposed to view or in the glove compartment, console, or similar compartment of the vehicle; provided, however, that any person in possession of a valid permit issued pursuant to Code Section 16-11-129 may carry a handgun in any location in a motor vehicle.”<sup>157</sup> Now that this limitation has been removed, those eligible for a concealed carry permit may carry a loaded firearm anywhere in a private motor vehicle. The Act also eliminates the following language in subsection (c): “[c]arrying on the person in a concealed manner other than as provided in this subsection shall not be permitted and shall be a violation of this Code section.”<sup>158</sup> Finally, the Act replaces the word “licenseholder” with the grammatically correct term “license holder.”<sup>159</sup>

#### *Sections 4: Concealed Carry*

Section 4 of the Act amends Code section 16-11-127, relating to carrying deadly weapons to or at public gatherings.<sup>160</sup> The Act redefines a public gathering to no longer include establishments where alcoholic beverages are sold, but derive fifty percent or greater of their yearly combined food and beverage revenue from food.<sup>161</sup> While the Act allows valid permit holders to bring a firearm into such establishments, they are not permitted to consume an alcoholic

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155. O.C.G.A., § 16-11-126 (c) (Supp. 2008).

156. See Bill Tracking, *supra* note 139.

157. HB 89 (AP), § 3(e), 2008 Ga. Gen. Assem.

158. *Id.*, § 3(c).

159. O.C.G.A., § 16-11-126(f) (Supp. 2008).

160. O.C.G.A. § 16-11-127 (Supp. 2008).

161. *Id.*

beverage while carrying a weapon.<sup>162</sup> The Act also expands the places where a valid permit holder may carry a firearm to include parks, historic sites, recreational areas, wildlife management areas, publicly owned buildings on those sites, and in public transportation, so long as not prohibited by federal law.<sup>163</sup>

Next, the Act adds retired local peace officers and constables to the enumerated list of those allowed to carry a pistol into a publicly owned or operated building.<sup>164</sup> However, the Act also creates an exception disallowing the carry of a pistol by even those enumerated individuals in courthouses that have adopted a security plan under Code section 15-6-10 that prohibit it.<sup>165</sup>

### *Sections 5: Constable Carry*

Section 5 of the Act amends Code section 16-11-127.1, by adding county constables to the list of those individuals exempt from the prohibition of weapons within school safety zones, school buildings, grounds, or at school functions.<sup>166</sup>

### *Section 6: License to Carry*

Section 6 of the Act revises subsection (d) of Code section 16-11-129, which relates to issuance of a license to carry a pistol or revolver and temporary renewal permits and adds a new subsection to the Code.<sup>167</sup> Specifically, section 6(d) limits the time a probate judge has to instruct law enforcement agencies to begin background checks after a firearm permit is requested, and gives the law enforcement agency thirty days to report back to the judge.<sup>168</sup> The judge then has ten days to issue the permit unless information regarding the ineligibility of the applicant was received.<sup>169</sup> Further, the section provides the applicant with an action in mandamus in the event the

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162. *Id.*

163. *Id.*

164. O.C.G.A. § 16-11-127 (Supp. 2008).

165. *Id.*

166. O.C.G.A. § 16-11-127.1 (Supp. 2008).

167. O.C.G.A. § 16-11-129 (d) (Supp. 2008).

168. *Id.*

169. *Id.*

judge fails to meet the required time limits.<sup>170</sup> The applicant may also recover the cost of the mandamus action, including reasonable legal fees.<sup>171</sup>

### *Section 7: Guns in Parking Lots*

Section 7 of the Act adds Code section 16-11-135, barring employers from establishing rules or policies that effectively prohibit employees from storing firearms in their locked private vehicles while parked in the employer's lot or other employee parking area.<sup>172</sup> The section also provides exceptions to the prohibition, including: if the employer maintains secure parking areas restricting public access; if the vehicle is owned or leased by the employer and the employee uses it in the course of business; if the employee is restricted from possessing a firearm due to pending or past disciplinary action; if the employer is a penal institution or confinement alternative; or if possessing a firearm on the premises is prohibited by state or federal law.<sup>173</sup> The section also provides limited employer liability from civil actions for damages "resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm" relating to that section.<sup>174</sup> Finally, the section states that nothing in the Act will restrict private property owners' rights to restrict access to their land, and appears to suggest that an employer who is also the property owner continues to have rights *qua* a property owner that will override the obligations created by the rest of this section in terms of permitting access to their property for employees with guns.<sup>175</sup>

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170. *Id.*

171. *Id.*

172. O.C.G.A. § 16-11-135 (a) (Supp. 2008).

173. O.C.G.A. § 16-11-135 (c), (d) (Supp. 2008).

174. O.C.G.A. § 16-11-135 (e) (Supp. 2008).

175. O.C.G.A. § 16-11-135 (k) (Supp. 2008).

*Section 8: Civil Immunity in States of Emergency*

Section 8 of the Act revises Code section 51-1-29.2 relating to civil immunity in certain situations. The Act greatly expands the immunity. First, the Act expands those eligible for the immunity from “[a]ny natural person” to “[a]ny natural person and any association, fraternal organization, private for profit entity, not for profit entity, religious organization, or charitable organization and the officers, directors, employees, and agents of such associations, organizations, and entities, when such persons, associations, organizations, or entities are working in coordination and under the direction of an appropriate state agency.”<sup>176</sup> Next, the Act expands the immunity to those not only who “provide services” during a time of emergency, but to those also providing “goods in preparation for” and “anticipation of” such emergencies.<sup>177</sup> Prior to the Act, the immunity was afforded to those who offered their services to benefit “any individual.”<sup>178</sup> This has been altered by the Act by replacing “any individual” with “any natural person or his or her property to prevent or minimize harm to such natural person.”<sup>179</sup>

Moreover, the Act expands the list of potential causes of damage for which the immunity is afforded to those offering aid. The Act adds in “biological, chemical, or nuclear agents; terrorism; pandemics or epidemics of infectious disease.”<sup>180</sup> It also adds the qualifier “any other occurrence which warrants the declaration of a state of emergency or disaster by the Governor pursuant to Code Section 38-3-51 or by a federal agency” to the list of potential causes.<sup>181</sup> Finally, the Act adds “[n]othing in this Code section shall be construed to amend, repeal, alter, or affect in any manner any other provision of law granting immunity or limiting liability.”<sup>182</sup> It goes on, stating “[n]othing in this Code section shall be construed to abrogate the

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176. O.C.G.A. § 51-1-29.2 (Supp. 2008).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. O.C.G.A. § 51-1-29.2 (Supp. 2008).

182. *Id.*

sovereign immunity of this state as to all actions executed by any party under this Code section.”<sup>183</sup>

### *Analysis*

#### *Child Safety Concerns over Guns in Cars*

Though the Act grew significantly from its inception as HB 89 in 2007, many of the Act’s opponents center their disagreement with the law on its original provision—permitting citizens without a concealed weapons permit to carry loaded firearms anywhere in their automobiles. Opponents argue this provision allows easier access to firearms in automobiles by children and therefore more accidents will occur. In a spirited speech from the House well in 2007 when HB 89 was being debated, Representative Stephanie Benfield (D-85th) described several chilling accounts of children being either killed or maimed by firearms from automobiles in “states that allow loaded firearms anywhere in the vehicle.”<sup>184</sup> Representative Benfield also stated that “if HB 89 passes, I hope that incidents like this do not occur in Georgia . . . but if this bill does pass, and a horrible incident like this does occur, please remember that I implored you to vote no to this bill.”<sup>185</sup>

#### *Concern Regarding Firearms on Public Transportation and in Restaurants*

Issues of public safety are inherently part of any debate on gun legislation. Several senators during the final day of the legislative session expressed concerns over the issue of allowing guns to be carried on public transportation, specifically the Metropolitan Atlanta Rapid Transit Authority (MARTA).<sup>186</sup> MARTA trains carry a large number of passengers and there is a fear that an individual acting

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183. *Id.*

184. See 2007 House Floor Video, *supra* note 3, at 1 hr., 44 min., 04 sec. (remarks by Rep. Stephanie Benfield (D-85th)).

185. *Id.*

186. See 2008 Senate CCR Adoption Video, *supra* note 147, at IV, 2h., 11 min., 57 sec. (remarks by Sen. Nan Orrock (D-36th)).

justifiably to protect him or herself in such a confined area could unintentionally harm innocent passengers.<sup>187</sup> The Senate sponsor of the provision, Chip Rogers (R-21st), responded to this argument by explaining that the provision only allows the 3% of Georgia's population that have a concealed carry permit to bring a firearm onto public transportation, and that forty-five other states have a similar provision without any notable incidents.<sup>188</sup> Additionally, a concern exists that MARTA has a direct line to the airport, and lets passengers off inside the building. Senator Vincent Fort (D-39th) asked if in the post 9/11 world, do we want to make it easier for individuals to carry guns to airports?<sup>189</sup> Senator Rogers responded to this question by emphasizing that HB 89 does not allow the general public to carry a firearm on MARTA, only those with concealed weapons permits, who have gone through extensive background checks and who historically do not break the law.<sup>190</sup> He stressed that those who are intent on committing a crime at an airport or elsewhere do not care if they break a carry provision before committing a heinous crime.<sup>191</sup> He believed that this act merely gives law abiding citizens exercise their Second Amendment rights the ability to protect themselves and their families from harm.<sup>192</sup>

Another concern with the Act is the provision that would allow an individual to carry a weapon into a restaurant that does not derive more than 50% of its sales from alcohol. A question arises as to how an individual can know by merely walking into an establishment whether food or alcohol revenue is predominant. While this may be obvious for places like *Chili's* or *Applebee's* it becomes less clear in sports bars that are family-friendly during the day, but become bars at night. Further, a possible issue may arise where a restaurant owner, failing to exercise the right to prohibit licensed individuals from carrying in the restaurant, is sued for negligence. The problem there is whether a reasonably prudent landowner should have foreseen the

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187. Interview with Alice Johnson, Director, Georgians for Gun Safety, Atlanta, Ga., (Apr. 10, 2008).

188. See 2008 Senate CCR Adoption Video, *supra* note 147, at IV, 2h, 10 min., 14 sec. (remarks by Sen. Chip Rogers (R-21st)).

189. See 2008 Senate CCR Adoption Video, *supra* note 147, at IV, 2h, 21 min., 01 sec. (remarks by Sen. Vincent Fort (D-39th)).

190. See *id.* (remarks by Sen. Chip Rogers (R-21st)).

191. *Id.*

192. *Id.*

need to exercise the restriction for the safety of others in the restaurant. The restaurant carry provision also includes a caveat that prevents the individual with a firearm from consuming alcohol in the establishment.<sup>193</sup> Senator Vincent Fort raised an issue concerning enforcement of this provision.<sup>194</sup> A Georgia concealed carry permit allows a firearm to be concealed on the body.<sup>195</sup> Senator Fort believes it is the duty of a responsible legislature not to pass measures that overworked law enforcement officers could not possibly enforce.<sup>196</sup> Senator Rogers acknowledged this concern, but noted that Georgia was only one of around a dozen states that have a restaurant prohibition and there was no historical evidence that those states without it had experienced any problems.<sup>197</sup>

### *Ambiguity of Public Gathering Language*

The final version of the Act to come out of the 2008 legislative session preserves the “public gathering” prohibition for even those individuals with a concealed carry permit.<sup>198</sup> The problems with this language are systemic. As discussed *supra*, one of the purposes of Representative Bearden’s 2008 Amendment was to statutorily clarify this ambiguous prohibition.<sup>199</sup> Since this portion of his offered amendment did not make it into the Act, Georgia citizens must still rely on unofficial attorney general opinions and equivocal court decisions to determine what constitutes a prohibited public gathering.<sup>200</sup>

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193. O.C.G.A. § 16-11-127 (Supp. 2008).

194. See 2008 Senate CCR Adoption Video, *supra* note 147, at IV, 2h., 16 min., 42 sec. (remarks by Sen. Vincent Fort (D-39th)).

195. O.C.G.A. § 16-11-126 (Supp. 2008).

196. See 2008 Senate CCR Adoption Video, *supra* note 147, at IV, 2h., 17 min., 38 sec. (remarks by Sen. Vincent Fort (D-39th)).

197. See *id.* at IV, 2h., 18 min., 01 sec. (remarks by Sen. Chip Rogers (R-21st)).

198. O.C.G.A. § 16-11-127, (Supp. 2008).

199. See discussion on Public Gatherings Amendment, text accompanying notes 123-136.

200. See Ga. Op. Att’y Gen. U96-22 (unofficial) (Oct. 25, 1996); *State v. Burns*, 200 Ga. App. 16 (1991).

### *Guns in Parking Lots: Private Property Rights v. Personal Property Rights*

The final version of the Act should avoid most conflict of rights issues between private and personal property owners as Section 7(k) of the Act contains a clause specifying that in such conflicts, the rights of a private property owner will control.<sup>201</sup> However, one issue that could arise involves what consequences firearm carriers may face if they violate an owner's prohibition against carrying on the owner's property where no state law was violated. The owner may have the right to eject the person from the property, but the Act does not address other possible sanctions.<sup>202</sup>

### *Constitutionality of Firearm Legislation Generally*

This firearm legislation passed in Georgia comes at a time when the constitutionality of gun control laws are being questioned generally. For the first time in nearly seventy years, in 2008, the Supreme Court of the United States decided a case directly relating to the meaning of the Second Amendment to the United State's Constitution. The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."<sup>203</sup> The case, *District of Columbia v. Heller*, was argued on March 18, 2008 and is reported at 128 S. Ct. 2783; 171 L. Ed. 2d 637.<sup>204</sup> The *Heller* Court interpreted the Second Amendment, specifically deciding the issue of whether the Amendment provides an individual right to keep and bear arms or whether such a right is tied to service in a militia.<sup>205</sup> The Court decided that the Second Amendment protects an individual's right to keep and bear arms, which is congruous with firearm legislation that expands gun-owners' rights, like the provisions contained in the Act. Indeed, Representative Timothy Bearden (R-68th) said, given an outcome favorable to gun rights advocates in the

201. O.C.G.A. § 16-11-135(k) (Supp. 2008).

202. See HB 89 (AP), § 7, 2008 Ga. Gen. Assem.

203. U.S. CONST. amend. II.

204. No. 07-290, available at [http://www.oyez.org/cases/2000-2009/2007/2007\\_07\\_290/argument/](http://www.oyez.org/cases/2000-2009/2007/2007_07_290/argument/).

205. See *id.*



*Heller* case, he intends to keep on expanding gun rights in Georgia through more firearm legislation in the future.<sup>206</sup>

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206. Bearden Interview, *supra* note 74.